



FEMA's SHPO Consideration Brief:

Development and Execution of a FEMA Prototype Programmatic Agreement

Based on a successful track record with the seventeen (17) State specific programmatic Agreements (PAs) currently in effect and with the eleven (11) State specific PAs in the process of being renewed, the Federal Emergency Management Agency (FEMA), via a letter from the Department of Homeland Security (DHS) to the ACHP dated March 25, 2010, formally announced its intention to develop a prototype programmatic agreement in accordance with 36 CFR §800.14(b)(4), the regulations implementing Section 106 of the National Historic Preservation Act (NHPA).

The mission of FEMA is to reduce the loss of life and property and protect the United States from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation.

Benefits of Prototype PA to SHPOs & FEMA

The prototype PA would continue to provide SHPOs with the crucial flexibility necessary to address unique State specific issues and concerns while also establishing a nationwide framework for FEMA to expedite Section 106 compliance by:

- Providing a national template to inform and streamline SHPO's State specific negotiations with SEMAs and FEMA, saving SHPOs and other State and local stakeholders valuable time and resources in often dire emergency situations.
- Further integrating historic preservation compliance into the formulation and delivery of FEMA funded undertakings.
- Eliminating the need for ACHP participation on a State by State basis.
- Providing a platform that may serve to develop and enhance working relationships between SHPOs and SEMAs in anticipation of future coordination efforts that may not necessarily involve FEMA.
- Allowing for a tailored compliance process reflecting state specific considerations that will significantly reduce the number of undertakings requiring Section 106 review, thereby further saving SHPOs, SEMAs, and FEMA precious time and resources.

FEMA recognizes that a prototype agreement may not necessarily serve the interests and concerns of Indian Tribes, and is committed to consulting with Tribal governments to determine the most

appropriate vehicle to address Tribal needs, including negotiating separate PAs or Memorandum of Understandings (MOUs) with FEMA or relying on the standard review process outlined in 36 CFR Part 800. FEMA's objective above all is to ensure that a mutually agreeable mechanism for consultation is established *before* disasters strike.

Existing State Specific PA Status & Negotiations with SHPOs Utilizing the Prototype PA

- Existing State specific PAs may remain in effect until they expire.
- Any SHPO may opt to not participate in the creation of a State Specific PA.
- Any SHPO may opt out of participating in FEMA's consultation with SHPOs regarding the proposed prototype PA (see "Process for Prototype PA Development" below).
- The ACHP will not participate in future FEMA State specific PAs unless unusual circumstances warrant otherwise.

Elements of FEMA's Proposed Prototype PA

FEMA proposes that the prototype agreement:

- Be applicable to all FEMA assistance programs, including:
 - Disaster Assistance (*e.g.* Public Assistance, Individual Assistance & Hazard Mitigation Grant Program) &
 - Non-Disaster Programs (*e.g.* Assistance to Firefighters Grants & Predisaster Mitigation Program)
- Establish roles and responsibilities of the signatories: FEMA, Tribes, SHPOs, and SEMAs, including requiring Section 106 review to be performed by credentialed FEMA staff.
- Establish abbreviated time frames for consultation.
- Utilize streamlined procedures to resolve adverse effects.
- Exempt routine FEMA funded activities with little or no potential to affect historic properties.

Please refer to the draft FEMA prototype PA outline and the Summary of FEMA Assistance Programs for additional information

Process for Prototype PA Development

FEMA will seek key input from state, tribal, and Federal stakeholders in formulating the proposed prototype PA. Specific to SHPO interests, FEMA's Federal Preservation Officer formally addressed NCSHPOs membership regarding the proposed prototype PA at the March 2010 annual meeting in Washington, D.C. In addition:

- The ACHP's Office of Federal Agency Programs will convene and guide several listening sessions for SHPOs to discuss the proposed prototype PA independent of FEMA involvement in the sessions (ACHP will provide specific dates and times).

- FEMA, NCSHPO, and the ACHP will follow up on the issues resulting from the SHPO listening sessions with a working meeting of select SHPOs to further address any concerns and solicit additional views on necessary inclusions within the agreement.

The ACHP intends to make additions to the FEMA portion of its website (<http://www.achp.gov/fema.html>) that will provide further information and periodic updates regarding FEMA's efforts to develop the proposed prototype PA.

The ACHP also will hold listening sessions for THPOs and Tribes on FEMA's behalf. Based on the results of the Tribal listening sessions, FEMA will initiate consultation with Tribes and convene 1-2 working meetings with select Tribal representatives and/or THPOs to discuss Tribal concerns and questions and solicit additional input regarding appropriate vehicle(s) to guide consultation. FEMA also will reach out to NATHPO and select Tribal associations. In addition, FEMA will consult with the National Emergency Management Association, the professional association of and for emergency management directors from all states, territories, and the District of Columbia. Through these outreach efforts, FEMA will learn of stakeholder concerns and receive input on desired elements of the agreement.

Upon completing these outreach efforts, FEMA intends to finalize the prototype PA and submit it to the ACHP for its formal consideration at the ACHP fall 2010 meeting.